

O I P E JC87
07 19 2004
PATENT & TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450, on 10/19/04

By Kurt Rattokin

PATENT

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

In re application of:)

Greg Brannstrom)

Examiner: Alicia M. Torres

Serial No. 10/616,312)

Art Unit: 3671

Filed: 07/08/2003)

DECLARATION OF

For: Tomato Harveste)

GREG BRANNSTROM

37 CFR §1.132

1. I, Greg Brannstrom, declare as follows, under penalty of perjury.

2. I have been building agricultural harvesting machinery since 1977. Prior to 1977, I attended the College of Hvilan, Sweden. I attended Hvilan for approximately four years and obtained various agriculturally related certificates, including certificates in agronomy and agricultural machinery and mechanics. Part of the training at Hvilan included working as an apprentice in the various fields of study. This training included an apprenticeship of eight to nine months in agricultural machinery with a company called A.M. Cani. I also worked as an apprentice for the Swedish Institute of Agricultural and Environmental Engineering ("JTI") for about a year.

KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLEW, & KIMBALL, LLP
4550 CALIFORNIA AVENUE, SECOND FLOOR
POST OFFICE BOX 11172
BAKERSFIELD, CALIFORNIA 93389-1172

1 3. After moving to the United States, from 1977 to 1978 I worked for Heidrik
2 Farms, an agricultural company, where I performed all of the maintenance on the company's
3 tomato harvesters. From 1978 to 1979, I changed employment to Mike Beeman Farms, where I
4 once again performed all of the maintenance on the company's tomato harvesters.

5 4. In 1979, I became self-employed and worked primarily as an independent
6 contractor for Bakersfield Food Harvesters, performing all of the repairs and maintenance on
7 that company's harvesting equipment. I became a partner at Bakersfield Food Harvesters in
8 1983 and continued to work there until 1985, when I started my own company which
9 manufactures tomato harvesting machinery. I have continuously worked for my own company
10 in manufacturing tomato harvesters since 1985 up through the present.

12 5. On page 5 of the Office Action received for patent application serial number
13 10/616,312, the Examiner makes the following statement: "It would have been obvious to one
14 having ordinary skill in the art at the time the invention was made to include the folding
15 conveyor of Hobbs on the harvester of Cetrulo in order to move the conveyors to an inoperative
16 position for storage and transportation." I have reviewed the patents cited by the Examiner,
17 which are United States Patent No. 3,921,375 (Cetrulo) and No. 4,184,314 (Hobbs). Based
18 upon my knowledge and experience with agricultural harvesting equipment, the combination
19 suggested by the Examiner cannot be made for the reasons stated below. Because the
20 combination cannot be made, the Examiner is incorrect in concluding that it would have been
21 obvious to someone skilled in the art to include the folding conveyors of Hobbs on the harvester
22 of Cetrulo.

25 6. Hobbs discloses a tri-section vine fluffer which is pulled by a hauling tractor.
26 Col.2:19-21; 35-40. The three conveyor sections of the Hobbs device comprise a continuously
27 horizontally disposed middle section B and two flanking outer sections, A and C, which are
28

1 pivotable relative to the middle section. Col. 1:67 – Col. 2:4. Each of conveyor sections A, B,
2 and C have a pair of endless chains 30 and 32 to which are attached a plurality of spaced apart
3 bars 34. Col.4:49-68. As shown in the figures of Hobbs, there are no structural features which
4 might interfere with the pivoting of the flanking outer sections A and B.

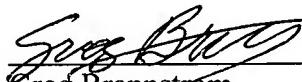
5 7. Cetrulo discloses a tomato harvesting header attachment for a potato combine.
6 The potato combine is towed by tractor 31. Col.2:17-19. As shown in Figures 2 and 3,
7 Cetrulo's header attachment has an upper conveyor 150 in spaced relation to a lower conveyor
8 74. Col. 3:63-65. Upper conveyor 150 has endless belt 165. As shown in Figure 4, lower
9 conveyor 74 has a plurality of conveyor belts 100. Cetrulo notes "the lower run of belt 165 and
10 the upper runs of said lower conveyor 74 will move in the same direction toward the elevating
11 conveyor 45." Col.3:63 – Col.4:14. Cetrulo states that the upper conveyor 150 and lower
12 conveyor 74 are so spaced such that tomato vines are transferred by being sandwiched between
13 the two conveyors: "the two conveyors, 150 and 74 by their cooperative relationship carry the
14 vines and the tomatoes thereon upwardly to deposit the same onto the elevating conveyor 45 . .
15 ." Therefore, conveyors 150 and 74, which are generally parallel to another, can not be
16 separated by more than a few inches in order to so transfer the tomatoes and vines by their
17 cooperative relationship.

18 8. The device of Hobbs is able to utilize right side and left side outrigger conveyors
19 because there is no structure above either of the conveyors to prevent each outrigger from
20 pivoting from a first position with the outriggers in the same relative position as the central
21 conveyor B to a second position with the outriggers at approximately a right angle to the
22 central conveyor. However, this is not true for the device of Cetrulo. The upper conveyor
23 directly overlies the conveyors 100, thereby precluding any means of pivoting these lower
24 conveyors as done in the device of Hobbs. In addition, in the device of Cetrulo the various
25
26
27
28

1 members of the framework of the combine 12 appear in Figures 1 and 2 to be directly above the
2 tomato header attachment, presenting a further obstacle to any pivoting of the conveyors 100.
3

4 9. For these reasons, modifying the device of Cetrulo to include the folding
5 conveyors of Hobbs as suggested by the Examiner simply cannot be made in any manner
obvious to me.

6
7 I further declare that all statements made herein of my own knowledge are true and that
8 all statements made on information and belief are believed to be true; and further that these
9 statements are made with the knowledge that willful false statements and like so made are
10 punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United
11 States Code, and that such willful false statements may jeopardize the validity of the application
12 and any patents resulting therefrom. Executed in Bakersfield, California on this 15 day of
13 October, 2004.

14 
15 Greg Brannstrom
16
17
18
19
20
21
22
23
24
25
26
27
28